

1 On September 25, 2009, the presiding judge granted LMA's renewed Motion for Entry of
2 Judgment and to Stay the Counterclaims pending appeal. [Docket No. 476.] On October 6, 2009, the
3 presiding judge entered Judgment on the patent claims and Ordered that the proceeding be stayed as to
4 the counterclaims. [Docket nos. 484, 485.] After the resolution of the appeal, the parties are to contact
5 the court, at which time the Court will consider lifting the stay and setting a new trial date. Because the
6 law¹ and issues involved in this motion may be substantially different if and when the new trial date is
7 set, and in the interests of judicial economy, It Is Hereby Ordered that the Motion to Exclude Expert
8 Testimony is DENIED WITHOUT PREJUDICE.

9 IT IS SO ORDERED.

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11 DATED: October 29, 2009

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13 Hon. Nita L. Stormes
14 U.S. Magistrate Judge
15 United States District Court
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26 ¹An Amendment to Rule 26 of the Federal Rules of Civil is pending on the topic of whether
27 draft expert reports are covered by the work product immunity. See
28 http://www.uscourts.gov/rules/Reports/Combined_ST_Report_Sept_2009.pdf. The split in authority on
this issue, and the pending amendment, argue strongly against exclusionary sanctions for any failure to
maintain draft expert reports.